

1 E. JEFFREY GRUBE (SB# 167324)  
jeffgrube@paulhastings.com  
2 KERRI N. HARPER (SB# 217377)  
kerriharper@paulhastings.com  
3 ANNA L. CHU (SB# 243378)  
annachu@paulhastings.com  
4 PAUL, HASTINGS, JANOFISKY & WALKER LLP  
55 Second Street  
5 Twenty-Fourth Floor  
San Francisco, CA 94105-3441  
6 Telephone: (415) 856-7000  
Facsimile: (415) 856-7100  
7

8 Attorneys for Defendant  
UNITED PARCEL SERVICE, INC.

9 STEVEN J. MEHLMAN (SB# 95881)  
steven@mehlman-terbeek.com  
10 MARC L. TERBEEK (SB# 166098)  
marc@mehlman-terbeek.com  
11 MEHLMAN TERBEEK LLP  
2124 Oak Grove Road, Suite 125  
12 Walnut Creek, CA 94598  
Telephone: (925) 935-3575  
13 Facsimile: (925) 935-1789

14 Attorneys for Plaintiff  
MARK HARRIS  
15

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION  
19

20 MARK HARRIS;

21 Plaintiff,

22 vs.

23 UNITED PARCEL SERVICE, INC.; an  
Ohio Corporation; and DOES ONE  
24 THROUGH HUNDRED, inclusive,

25 Defendants.  
26  
27  
28

CASE NO. C-08-01810 JSW

**JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED] ORDER**

Date: August 8, 2008  
Time: 1:30 p.m.  
Courtroom: 2, 17th Floor

At the Court's request, the parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.<sup>1</sup>

**I. JURISDICTION AND SERVICE**

This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331, 1332, 1367, and 1441(a) and (b). No issues exist regarding personal jurisdiction or venue. All parties have been served.

**II. FACTS**

**A. UPS' Factual Summary:<sup>2</sup>**

Mark Harris worked for Defendant United Parcel Service, Inc. ("UPS") as a package car driver in Oakland, California. On November 15, 2005, UPS terminated Plaintiff's employment for job abandonment after Plaintiff failed to report for work for eleven months. UPS also issued discharge letters to Plaintiff in April 2006, July 2006 and April 2007 for being off work in excess of the period of time permitted by the collective bargaining agreement ("CBA") that governed the terms of Plaintiff's employment.

Harris alleges that UPS discriminated against him on the basis of his age, race, and disability by discharging him. He also claims that UPS failed to accommodate his disability, retaliated against him by discharging him for engaging in protected activities, breached the CBA between UPS and the Teamsters Union, and engaged in unfair competition by discharging Plaintiff. Plaintiff further alleges that he suffered extreme emotional distress. Plaintiff brings this action under the California Fair Employment and Housing Act ("FEHA"), California common law, and the California Unfair Competition Law, Business & Professions Act § 17200.

UPS denies that it engaged in any unlawful conduct with respect to Plaintiff's employment or that he suffered any damages as a result of any alleged conduct. UPS followed

<sup>1</sup> For the Court's information, none of the information written on behalf of UPS or to which the parties are in agreement are different than what UPS set forth in the Case Management Conference Statement it filed on August 1, 2008.

<sup>2</sup> On April 22, 2008, the parties stipulated to dismiss individual defendants Tony Agenjo and Kimberly Muniz from this action. The Court signed the order approving the stipulation on April 23, 2008.

1 the law with respect to each of its interactions with Plaintiff, provided Plaintiff with reasonable  
2 accommodations, and made all of its decisions regarding Plaintiff for legitimate, non-  
3 discriminatory, and non-retaliatory business reasons.

4 **B. Plaintiff's Factual Summary:**

5 Plaintiff, a longtime employee of UPS, suffered an industrial injury on March  
6 10, 2004, and has been thereafter disabled from his former occupation as Driver. Plaintiff timely  
7 reported his industrial injury, and has sought and obtained treatment for that injury through the  
8 California Worker's Compensation System. During his period of disability, Plaintiff was given  
9 notice by UPS of its intent to terminate his employment, the first such notice of which was given  
10 in November, 2005. UPS failed and/or refused to accommodate Plaintiff's disability in that it  
11 failed or refused to offer him available alternative employment prior to issuance of its notice of  
12 termination.

13 Plaintiff timely commenced a grievance proceeding as required under the  
14 applicable CBA and in April 2006, was reinstated to employment after a hearing on the matter  
15 was had. Plaintiff reported for work, but was refused any employment and the following day UPS  
16 issued its second notice of termination of employment. Plaintiff again pursued his remedies  
17 under the applicable CBA, and on the day prior to his second hearing, in July, 2006, was given  
18 notice that his employment had been terminated. Plaintiff was again reinstated. UPS then issued  
19 a third notice of termination following a third hearing in the matter in which the matter was left  
20 unresolved due to a deadlock.

21 Plaintiff alleges that UPS discriminated against him on the basis of his age and/or  
22 race and/or disability and/or for engaging in protected activities, all in violation of the applicable  
23 CBA, the California FEHA, the ADA, the FMLA, California common law and California's  
24 Unfair Competition law, Bus. & Prof. Code Section 17200.

25 **III. LEGAL ISSUES**

26 Because this case is at an early phase, and because the parties have not completed  
27 discovery, the parties do not know all legal issues that may be in dispute. However, it appears  
28 there will be disputed legal issues regarding the following topics:

- 1                   1.       Whether Plaintiff's claims are barred by the applicable statute of
- 2 limitations;
- 3                   2.       Whether Plaintiff's claims are barred because Plaintiff failed to exhaust his
- 4 administrative remedies;
- 5                   3.       Whether UPS had a legitimate, non-discriminatory reason for terminating
- 6 Plaintiff;
- 7                   4.       Whether Plaintiff suffered from a disability;
- 8                   5.       Whether Plaintiff was qualified to perform all of the essential duties of a
- 9 package car driver, with or without reasonable accommodation;
- 10                  6.       Whether Plaintiff requested reasonable accommodation for his purported
- 11 disability;
- 12                  7.       Whether UPS granted Plaintiff reasonable accommodation;
- 13                  8.       Whether accommodating Plaintiff would constitute an undue hardship
- 14 upon UPS;
- 15                  9.       Whether Plaintiff engaged in a protected activity that could be the basis for
- 16 a retaliation claim;
- 17                  10.      Whether UPS took an adverse employment action against Plaintiff because
- 18 he engaged in protected activity;
- 19                  11.      Whether UPS had a legitimate, non-retaliatory reason for terminating
- 20 Plaintiff's employment;
- 21                  12.      Whether UPS violated the CBA when it terminated Plaintiff;
- 22                  13.      Whether Plaintiff exhausted internal grievance procedures;
- 23                  14.      Whether Plaintiff suffered any damages as the result of any alleged
- 24 wrongful conduct by UPS;
- 25                  15.      Whether Plaintiff suffered any emotional distress as a result of UPS'
- 26 alleged conduct and, if so, the nature and extent of any such emotional distress;
- 27                  16.      Whether UPS engaged in any behavior that was so extreme and outrageous
- 28 as to exceed all bounds of that usually tolerated in a civilized society;

17. Whether Plaintiff satisfied his duty to mitigate any alleged damages;

18. Whether UPS had any unfair company policy that harmed Plaintiff;

19. Whether any managing agent of UPS was guilty of malice, fraud, and/or oppression as defined under Civ. Code Section 3294;

20. Whether Plaintiff is entitled to any punitive damages.

#### IV. MOTIONS

UPS may move for judgment on the pleadings. At the appropriate time, UPS anticipates moving for summary judgment on all of Plaintiff's claims. Defendant will file discovery motions as necessary. If appropriate, UPS will move to bifurcate the liability and punitive damages phases of the trial.

Plaintiff may either move for protective orders regarding his employment records with PMS and other non-UPS entities or may seek to quash subpoenas that seek such records.

#### V. AMENDMENT OF THE PLEADINGS

Plaintiff intends to amend his complaint pursuant to stipulation with Defendant.

UPS reserves the right to answer any further amended complaint and to seek leave to amend its answer to comport to facts and theories as discovered during the course of this litigation.

#### VI. EVIDENCE PRESERVATION

UPS has notified relevant personnel of the need to preserve evidence relevant to the issues reasonably evident in this action, including all relevant documents, records, and electronic information in their possession.

Plaintiff has made reasonable efforts to preserve relevant evidence in his possession, custody and control.

#### VII. INITIAL DISCLOSURES

Pursuant to Rule 26(a)(1)(C), the parties stipulated to exchange initial disclosures on or before August 8, 2008.

1 **VIII. DISCOVERY**

2 **A. UPS' Response:**

3 Because discovery already had commenced in state court before this suit was  
4 removed to federal court, the parties stipulated to complete the requested discovery before initial  
5 disclosures. Thus, UPS deposed Plaintiff for one day. Plaintiff has agreed to sit for a second day  
6 of deposition on a date mutually agreeable to the parties. Plaintiff also has responded to UPS'  
7 request for production of documents.

8 Additionally, UPS has served a subpoena on Pacific Maritime Association, which  
9 Plaintiff contends is his current employer. Plaintiff has indicated that he will move to quash UPS'  
10 subpoena. The parties will meet and confer regarding this discovery dispute.

11 Through the course of this litigation, UPS will continue to seek discovery  
12 regarding Plaintiff's claims and UPS' defenses. UPS anticipates deposing Plaintiff's doctors, any  
13 percipient witnesses, and any designated experts. If necessary, UPS will propound additional  
14 discovery requests, including interrogatories, requests for admission, document requests, and  
15 third party subpoenas.

16 **B. Plaintiff's Response:**

17 Written Discovery: Plaintiff intends to seek written discovery of Defendants'  
18 policies and procedures concerning its treatment of injured workers (including those who assert  
19 claims for compensation for industrial injuries), the methods and manner in which it seeks to  
20 accommodate those workers, its disciplinary policies procedures and its procedures concerning  
21 how it terminates persons for "job abandonment." Plaintiff further intends to seek written  
22 discovery concerning prior litigation against UPS for claims substantially similar to those asserted  
23 by Plaintiff herein, including any court rulings/judgment or consent decrees arising from such  
24 litigation.

25 Deposition Discovery: Plaintiff intends to seek the deposition of the authors of the  
26 letters giving notice of his termination, and of the persons most knowledgeable concerning  
27 Defendants' policies and procedures concerning its treatment of injured workers (including those  
28 who assert claims for compensation for industrial injuries), the methods and manner in which it



1 seeks to accommodate those workers, its disciplinary policies procedures and its procedures  
2 concerning how it terminates persons for "job abandonment."

3 **IX. CLASS ACTIONS**

4 This case is not a class action.

5 **X. RELATED CASES**

6 The parties are not aware of any related cases.

7 **XI. RELIEF**

8 **A. UPS' Response:**

9 UPS contends that Plaintiff has not suffered any harm or damages by any conduct  
10 of its employees.

11 **B. Plaintiff's Response:**

12 Plaintiff contends that he has suffered economic damages consisting of lost wages  
13 and benefits exceeding \$1 million over his anticipated working life, assuming retirement from  
14 UPS with full benefits at age 67. In addition, Plaintiff contends that he has suffered non-  
15 economic damages consisting of emotional distress in an amount exceeding his economic  
16 damages.

17 Plaintiff will also seek exemplary damages according to proof at trial of this  
18 matter.

19 **XII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

20 Because this case is at an early phase and because the parties have not yet  
21 completed discovery, the parties do not know the prospects for settlement.

22 **XIII. MAGISTRATE JUDGE**

23 The parties do not consent to have a magistrate judge conduct all further  
24 proceedings in this matter, including trial.

25 **XIV. OTHER REFERENCES**

26 The parties do not believe that this case is suitable for reference to binding  
27 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.  
28

**XV. NARROWING OF ISSUES**

UPS may file a motion for judgment on the pleadings on Plaintiff's claims as appropriate. UPS also anticipates filing a summary judgment motion on all of Plaintiff's claims. Additionally, if the case proceeds to trial, UPS anticipates filing a motion to bifurcate the liability and punitive damages phases of the trial.

**XVI. EXPEDITED SCHEDULE**

The parties do not believe this case can be handled on an expedited basis with streamlined procedures.

**XVII. SCHEDULING**

Non-expert discovery cut-off: January 30, 2009.

Last day to file dispositive motions: March 31, 2009.

Exchange of names, vitae, and reports of expert witnesses: May 29, 2009.

Exchange of names, vitae, and reports of rebuttal expert witnesses: June 29, 2009.

Expert discovery cut off: August 13, 2009.

Final pre-trial conference: September 11, 2009.

Trial: October 13, 2009.

**XVIII. TRIAL**

Plaintiff has requested a jury trial. Because of the early stage of the proceedings, the parties are uncertain how long the trial may last, but anticipate that it may last seven to ten court days.

**XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS****A. UPS' Response:**

On April 3, 2008, UPS filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16. In its certification, UPS stated that it had no parent companies and that no publicly-held corporations own ten percent or more of its stock. UPS further certified that pursuant to Local Rule 3-16, other than the named parties, it had no such interest to report.



**B. Plaintiff's Response:**

Other than Plaintiff, and those persons that may be identified by Defendant, Plaintiff is not aware of any interest parties as defined by Local Rule 3-16.

Dated: August 5, 2008

E. JEFFREY GRUBE  
KERRI N. HARPER  
ANNA L. CHU  
PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: /s/ Kerri N. Harper  
KERRI N. HARPER

Attorneys for Defendant  
UNITED PARCEL SERVICE, INC.

Dated: August 5, 2008

STEVEN J. MEHLMAN  
MARC L. TERBEEK  
MEHLMAN TERBEEK LLP

By: /s/ Marc L. TerBeek  
MARC L. TERBEEK

Attorneys for Plaintiff  
MARK HARRIS

**[PROPOSED] CASE MANAGEMENT ORDER**

The Joint Case Management Conference Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

DATED: \_\_\_\_\_.

By: \_\_\_\_\_

HON. JEFFREY S. WHITE  
Judge, United States District Court